

WEDNESDAY, JANUARY 9, 2002

The Board met at its offices at 450 N Street, Sacramento, at 10:35 a.m. with Mr. Chiang, Chair, Mr. Klehs, Vice Chair, Mr. Andal and Mr. Parrish present, Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code section 7.9.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Roger L. French, 127536
1994, \$9,846.00 Assessment

For Appellant: Roger L. French

For Franchise Tax Board: Mark McEvilly, Tax Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether appellant is entitled to exclude a settlement award from gross income on the basis that such award was received on account of personal injuries.

Appellant's Exhibit: Letter dated 3/4/94 & misc. documents (Exhibit 1.1)

Copy of Internal Revenue Code section 104, Court Case of Erich E. and Helen B. Schleier, 5/2/01 Memo from FTB (Exhibit 1.2)

Action: Mr. Andal moved that the appeal be granted. The motion was seconded by Mr. Parrish but failed to carry, Mr. Andal and Mr. Parrish voting yes, Mr. Chiang, Mr. Klehs and Ms. Mandel voting no.

Upon motion of Mr. Chiang, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the appeal be submitted for decision.

Exhibits to these minutes are incorporated by reference.

Brian D. Kelly, 114265
1994, \$1,368.00 Claim for Refund

For Appellant: No Appearance

For Franchise Tax Board: Lorig Mushegain, Tax Counsel

Action: The Board took no action.

The Board recessed at 11:10 a.m. and reconvened at 1:27 p.m. with Mr. Chiang, Mr. Klehs, Mr. Andal and Dr. Connell present.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 1:28 p.m. and reconvened immediately into closed session with Mr. Chiang, Mr. Klehs, Mr. Andal and Dr. Connell present.

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CLOSED SESSION

The Board met to discuss pending litigation, Revenue and Taxation Code sections 7093.5, 7093.5(b)(3), 30459.1 and 50156.11, settlements and personnel matters.

The Board recessed at 1:45 p.m. and reconvened immediately into open session with Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel present.

BUSINESS TAXES APPEALS HEARINGS

Chungui Kim and Ok Hui Kim, 66868

1-1-96 to 12-31-98, \$63,241.80 Tax

\$6,210.76 Penalty, Negligence

\$6,210.76 Penalty, Failure to Timely Pay

For Petitioner:

Chungui Kim

Ok Hui Kim

Donald L. Field, Jr., Attorney

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether the audited understatement of taxable sales was established in accordance with the facts.

Whether relief from the negligence penalty is warranted.

Appellant's Exhibit: Statement of Ok Hui Kim (Exhibit 1.3)

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the failure to timely pay the determination penalty be removed. The remaining issues were submitted for decision.

Mr. Chiang introduced David Horwitz, Business Tax Compliance Supervisor, Norwalk District Office. Mr. Horwitz's Business Taxes class attended the Board meeting to observe the Board in session.

Michael Charles Cole, 101076

1-1-92 to 5-31-95, \$3,634.27 Tax

\$00.00 Penalty, Failure to File

Michael Charles Cole & Ronald Dwayne King, 89002373060

6-1-95 to 12-31-95, \$4,597.93 Tax

For Petitioner:

Michael Cole

For Sales and Use Tax Department:

Stephen M. Smith, Counsel

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Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether relief from the tax under Revenue and Taxation Code section 6596 is warranted for alleged reliance on erroneous oral advice petitioners received from a Board employee.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Lancaster Colony Commercial Products Inc., 61942

1-1-90 to 6-30-97, \$73,270.88 Tax

\$00.00 Penalty, Failure to File

For Petitioner: No Appearance

For Sales & Use Tax Department: David H. Levine, Counsel

Action: The Board took no action.

Francisco Alvarado Rodriguez, 90899

10-31-97 to 12-28-99, \$23,560.83 Tax

\$5,890.22 Penalty, Fraud

For Petitioner: Scott Lyons, Attorney

For Sales and Use Tax Department: Jeffrey H. Graybill, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether petitioner operated the restaurant as a sole proprietor or as a partnership.

Whether the penalty for fraud was properly assessed against petitioner.

Mr. Abbott stated for the record that the issue of whether petitioner operated the restaurant as a sole proprietor or as a partnership had been resolved. The only issue remaining is the fraud issue.

Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 2:35 p.m. and reconvened at 2:40 p.m. with Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel present.

FINAL ACTION ON PETITIONS HEARD JANUARY 9, 2002

Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Chiang, Mr. Andal and Mr. Parrish voting yes, Mr. Klehs and Ms. Mandel voting no, the Board ordered that the appeal of *Roger L. French, 127536*, be granted.

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Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition of *Chungui Kim and Ok Hui Kim, 66868*, be redetermined with adjustments. The Board directed staff to offer petitioner a payment plan and the inform the petitioner of the Offer in Compromise Program.

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition of *Michael Charles Cole, 101076*, and *Michael Charles Cole & Ronald Dwayne King, 89002373060*, be redetermined as recommended by the Appeals Section. The Board directed staff to offer petitioner a payment plan.

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition of *Francisco Alvarado Rodriguez, 90899*, be redetermined as recommended by the Appeals Section.

The Board adjourned at 2:45 p.m.

The foregoing minutes are adopted by the Board on March 27, 2002.